BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOYCE FAYE MANN	)	
Claimant	)	
	)	
VS.	)	
	)	
ABSOLUTE HOME HEALTH CARE	)	
Respondent	)	Docket No. 1,027,880
	)	
AND	)	
	)	
TECHNOLOGY INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Claimant requested review of the May 2, 2006, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found that claimant's injury resulted from a personal risk and was not a work-related injury. Accordingly, claimant's request for benefits was denied.

Claimant argues that she broke her foot because of increased job duties and from a traumatic injury to her foot in March 2006[1] and, therefore, this claim is compensable and not associated with a preexisting condition or personal risk.

Respondent and its insurance carrier (respondent) contend that claimant's injury was a personal risk injury and a result of an activity of daily living or the natural aging process. Accordingly, respondent requests that the ALJ's Order be affirmed.

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[1] Claimant's Form K-WC E-1 alleged a single accident date of March 4, 2006, but she orally amended her claim to "each and every working day through March 4, 2006," at the May 2, 2006, preliminary hearing. (P.H. Trans. at 4).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant is a home health nurse with respondent. In January 2006, a time when her caseload was heavy, she suffered pain in her right foot. She did not report the condition to respondent and went instead to see her personal physician, Dr. Terri Walton. Dr. Walton's records of January 9, 2006, indicate:

> [Claimant] states she started having the pain about a week ago when she had to do more home health visits. She states that she had to do a lot of walking especially up and down stairs. She denies any particular injury to her foot however she states that it hurts especially bad when she walks on it or when she first gets off of it.[2]

An x-ray was taken of the foot which did not show any significant bone or joint pathology. Dr. Walton told claimant that she had a stress fracture and recommended that she wear a special shoe to make it easier for her to work. Dr. Walton did not give claimant any medical restrictions.

Claimant continued to work. On March 4, 2006, as she was stepping down off a high step from a porch after visiting a patient, she heard a pop in her right foot. She continued to work that day, but by the time she returned home, her foot was swollen. She called respondent and talked to the on-call nurse. She told him she thought she broke her foot and said that she did not think she could work the next day or the weekend. The on-call nurse did not seem to understand her problem, so she gave up and told him she would go ahead and work. On March 7 she went to the emergency room. An x-ray was taken, which showed a nondisplaced fracture of the right 5th metatarsal. Claimant was given a work restriction for sedentary work only and was placed in a Cam walker.

Claimant described standing and climbing steps as a big part of her job, although she does spend time driving from one patient's home to another and is also able to sit during part of the time when she is with a patient. She admitted that because of a knee problem, in the fall of 2005 she requested that respondent give her jobs where she would not have to climb as many stairs, and that request had been granted.

The Workers Compensation Act (Act) states that the term "accident" should be construed in a manner to effectuate the Act's primary purpose that employers bear the expense of work related accidents. The Act provides:

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[2] P.H. Trans., Cl. Ex. 1 at 11.

> "Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and **often, but not necessarily, accompanied by a manifestation of force**. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate **the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.**[3] (Emphasis added.)

Respondent argues that claimant injured her foot in an activity of daily living and, therefore, her injury cannot be considered as having been caused by work, citing K.S.A. 2005 Supp. 44-508(e), which provides:

> "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. **An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.** (Emphasis added.)

As claimant points out in her brief, this case presents a factual and legal scenario quite similar to *Ricks*,[4] where the Board stated:

> But the Act does not define day-to-day living activities. The Kansas Supreme Court, however, in *Boeckmann*[5] denied compensation as the worker's condition could not be traced to any stress, strain, or unusual exertion at work but, instead, everyday activities had eroded his body's fibers and any movement aggravated his condition, regardless of whether the activity occurred on or off the job. The Board concludes the above-quoted statute is a codification of *Boeckmann*.
>
> The Kansas Court of Appeals has also held that although a preexisting condition may be aggravated by everyday activities, that fact alone is not controlling.
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> > Where an employment injury is clearly attributable to a personal (idiopathic) condition of the employee, and no other factors intervene or operate to cause or contribute to the injury, no award is granted. [Citation omitted.] But where an injury results from the

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[3] K.S.A. 2005 Supp. 44-508(d).

[4] *Ricks v. Connect Care*, Docket No. 233,090, 2002 WL 31828564 (Kan. WCAB Nov. 10, 2002).

[5] *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972).

> concurrence of some preexisting idiopathic condition *and* some hazard of employment, compensation is generally allowed.[6]

However, in *Ricks*, the claimant had no preexisting condition that could result in additional injury from almost any type of activity. Here, claimant not only had the preexisting stress fracture, but she also weighed in excess of 400 pounds. Respondent points to both these conditions as contributory. Respondent also notes that claimant's job duties had been altered to accommodate a prior knee problem. As a result, her stair climbing had been significantly reduced.

An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[7] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[8] The circumstances of claimant's accident do not support a finding of personal risk. Rather, it was a hazard of employment, descending a high step, that caused her foot fracture. Claimant's accident is distinguishable from the worker's situation in *Boeckmann* because claimant's injury occurred from a hazard or risk directly related to claimant's work and what claimant was required to do in fulfilling her work duties. Claimant was required to climb up and down stairs to access clients in their homes, and her accidental injury occurred as she was descending a somewhat high stair on that occasion. Accordingly, claimant's foot injury directly resulted as a consequence of her employment.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated May 2, 2006, is reversed, and this matter is remanded to the ALJ for further orders consistent herewith on claimant's request for preliminary benefits.

IT IS SO ORDERED.

Dated this _____ day of July, 2006.

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BOARD MEMBER

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[6] *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 460, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992).

[7] *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, 771, 955 P.2d 1315 (1997).

[8] *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 502, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

c: Phillip B. Slape, Attorney for Claimant
Joseph R. Ebbert, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director